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SUBJECT: MOVIE INDUSTRY LOSES LANDMARK COPYRIGHT CASE

¶1. (SBU) SUMMARY: A Hollywood conglomerate representing 34 of the biggest motion picture studios in Australia and the United States lost a landmark federal court decision against Australian internet service provider (ISP) iiNet. The case was part of an international campaign to secure legislative intervention to force ISPs to police their networks. The studios alleged iiNet was liable for copyright violations carried out by its customers, but the court ruled that the provision of internet services did not amount to authorization of copyright infringement. The studios must now look for other ways to protect their commercial interests from copyright theft and are likely to increase their lobbying of the Australian government for legislative changes. END SUMMARY.

#### Landmark Decision -----

¶2. (SBU) Australian Federal Court ruled that Perth-based ISP iiNet cannot be held responsible for copyright infringement activity - illegally downloading movies and television programs -- carried out on its network by its customers, despite the fact that iiNet had knowledge of the infringement and failed to take steps to stop its conduct. While the studios alleged iiNet was liable for copyright violations, the court interpreted instead that the provision of internet services did not amount to authorization of copyright infringement.

¶3. (U) The court further determined that the infringement was enabled through the use of BitTorrent, a file-sharing software, over which iiNet had no control. iiNet supported the decision by saying it had not "supported, encouraged or authorized illegal sharing or downloading of files in breach of the copyright laws." The company has approximately 750,000 telecommunications customers, about 1,300 employees, and recorded annual revenues of USD418 million last year.

#### Movie and TV Studios -----

¶4. (U) The studios, represented by the industry group Australian Federation Against Copyright Theft (AFACT) and consisting of 34 of the biggest motion picture studios in Australia and the United States (Universal, Paramount, Warner, Columbia, Paramount, Fox, Dreamworks, Sony, etc.), are disappointed by the decision, which they say supports the status quo that has allowed ISPs to avoid the burden of policing the internet on behalf of copyright owners.

¶5. (SBU) While AFACT lawyers are busy digesting the 200-page court decision, AFACT Executive Director Adrienne Pecotic told Econoff that, at first glance, the decision seems to undermine the intent of the Australian Telecommunications Copyright Act - which Pecotic said is based largely on the U.S. Digital Millennium Copyright Act - to promote cooperation between ISPs and the motion picture industry to

stop copyright theft.

¶6. (SBU) AFACT is likely to appeal the decision, though it could take two years to resolve the matter if it is pushed to the High Court. Broadband and Communications Minister Stephen Conroy said the government would examine the decision and consider the implications for the industry.

¶7. (SBU) Comment: The hope for AFACT and the big studios was that a favourable decision would have established an international precedent that could have forced ISPs to tightly police the activities of their customers. Instead, other than through a long appeal process, the studios must now look for other ways to protect their commercial interests from copyright theft. AFACT will likely increase its lobbying of the Australian government for legislative changes. In the meantime, the problem will persist and probably worsen with the advent of Australia's high-speed National Broadband Network, as the speeds at which copyright theft can take place will literally multiply.

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